



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1998

Mr. Herbert L. Prouty
City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR98-0786

Dear Mr. Prouty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113513.

The City of Denton (the "city") received a request for information relating to items prepared, reviewed, or discussed in conferences with employees during three specified city council meetings. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.107, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the information submitted.

Initially, you have marked certain information with red brackets that you assert is not responsive to the request because it involves "items which were not discussed in conferences with employees during the three meetings indicated." Because the information is not responsive to the request, you need not disclose the red bracketed information. We will rule only on the portions of the information that you have asserted are responsive and are excepted from public disclosure.

You have highlighted portions of the responsive information that you assert is excepted by section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion

or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We conclude that most of the highlighted information may be withheld under section 552.107. We have marked the information that is not excepted by section 552.107 and therefore must be released.

We note that the information that must be released is not excepted by section 552.111 as it is factual information. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5.

Next, you contend that some of the requested information is excepted from public disclosure by section 552.101 in conjunction with section 312.003 of the Tax Code because the information pertains to pending requests for tax abatement for which no tax abatement agreement has been executed. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 312.003 provides:

Information that is provided to a taxing unit in connection with an application or request for tax abatement under [the Property Redevelopment and Tax Abatement Act] and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential under this section.

Section 312.003 makes confidential only "information . . . that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought." We have marked the information in Exhibits A1, B1, C1, and F1 that is deemed confidential by section 312.003 of the Tax Code. As for the remainder of the information in these exhibits, we will consider whether it is excepted from public disclosure by section 552.110 of the Government Code.

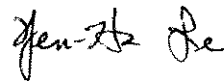
Since the property and privacy rights of third parties are implicated by the release of the information in Exhibits A1, B1, C1, and F1, this office notified Carter & Burgess, Inc., Denton Regional Medical Center, Hartzell Manufacturing Incorporated, and PACCAR, Inc.

of the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Government Code section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

None of the four companies responded to the notice. Therefore, we have no basis to conclude that the four companies' information is excepted from disclosure by section 552.110. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. The remaining requested information pertaining to these four companies must, therefore, be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 113513

Enclosures: Marked documents

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